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MONTANA JUVENILE DETENTION MANUAL

A GUIDE TO THE
JUVENILE JUSTICE AND DELINQUENCY PREVENTION ACT
AND MONTANA YOUTH COURT ACT

FOR

JUVENILE DETENTION CENTERS AND
ADULT JAILS AND LOCKUPS

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INTRODUCTION

This handbook has been developed to acquaint key players in the juvenile justice system with both the Juvenile Justice and Delinquency Prevention Act (JJDPA) and corresponding state statutes. This information will familiarize those involved in the juvenile justice arena with the congruence between state law and the JJDPA regarding the processing and holding of juveniles.

As a participant in the Juvenile Justice and Delinquency Prevention Act, Montana must maintain and monitor compliance with the core requirements of the JJDPA. The Montana Board of Crime Control Juvenile Justice Program is the state agency designated to administer federal JJDPA funds and provide staff support to the Youth Justice Council. Working in conjunction with the Council and other juvenile justice system members, the state Juvenile Justice Specialist provides the leadership necessary to coordinate the JJDPA and juvenile justice efforts.

Montana receives JJDPA funds annually, dependent upon compliance with the core requirements of the JJDPA. The core requirements, explained further in this manual, have become tenants for basic professional practice throughout the country. These funds are available to every community in Montana, who report crime data to the Board of Crime Control on the MUCR/NIBRS and CAPS JPIS systems.

It is incumbent upon all agencies and departments to assist the state in maintaining compliance and retaining these funds for juvenile justice programming. For more information on Montana's involvement with the Juvenile Justice and Delinquency Prevention Act, please contact:

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JUVENILE JUSTICE & DELINQUENCY PREVENTION ACT OVERVIEW

In 1974, Congress enacted the Juvenile Justice and Delinquency Prevention Act[1] (JJDPA) in order to reform the juvenile justice system. This legislation was designed to provide federal direction, coordination, and resources to increase the effectiveness of state juvenile justice systems. In keeping with changes in the juvenile justice environment, the JJDPA has been amended every four years since its inception through 1992. Since 1994 reauthorization has been postponed and is currently pending.

Consistent with it's comprehensive focus, other objectives of the JJDPA include:

- the enhancement of state and local juvenile justice planning,
- the strengthening and maintenance of the family unit,
- the provision of assistance and pass through funds for Native American Tribes,
- the development of programs for disadvantaged youth,
- the development of educational advocacy, and community based programs, and
- the prevention of alcohol and drug use.

The Juvenile Justice and Delinquency Prevention Act, evolving from decades of debate concerning juvenile justice, represents widespread consensus on what constitutes "best practices" with juveniles. The requirements of the JJDPA provide a standard against which states and communities can assess the comprehensiveness and effectiveness of their own policies and procedures regarding juveniles. The JJDPA allows states to enter into a voluntary partnership with the federal government in the effort to create innovative, responsive strategies to address juvenile justice issues. The JJDPA funds often provide the initial revenue for both the development and implementation of pilot programs for juveniles, consequently, the effectiveness of the programs can be assessed before instituting them on a statewide level.

Th JJDPA contains the following core requirements, the first four are tied to funding:

1 DEINSTITUTIONALIZATION OF STATUS OFFENDERS AND NON-OFFENDERS (DSO)
"Provide within three years after submission of the initial plan that juveniles who are charged with or who have committed offenses that would not be criminal if committed by an adult of offenses which do not constitute violations of valid court orders, or alien juveniles in custody, or such non-offenders as dependent or neglected children, shall not be placed in secure detention facilities or secure correctional facilities." [Section 223(a)12(A)]

2 SIGHT AND SOUND SEPARATION
"Provide that juveniles alleged to be found to be delinquent and youths within the purview of paragraph (12) shall not be detained or confined in any institution in which

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[1] Public Law 93-415, 42 U.S.C 5601

they have contact with adult persons incarcerated because they have been convicted of a crime or are awaiting trial on criminal charges or with the security staff or direct-care staff of a jail or lockup for adults." [Section 223(a)13]

3 JAIL REMOVAL
"Provides that no juvenile shall be detained or confined in any jaill or lockup for adults." [Section 223(a)14]

4 DISPROPORTIONATE MINORITY CONFINEMENT (DMC)
"Address efforts to reduce the proportion of juveniles detained or confined in secure detention facilities, secure correctional facilities, jails and lockups who are members of minority groups if such proportion exceeds the proportion such groups represent in the general population." [Section 223 (a) 23]

5 COMPLIANCE MONITORING
"Provides for an adequate system for monitoring jails, detention centers, correctional facilities, and non-secure facilities to insure that the requirements of paragraph (12)(A), (13) and (14) are met, and for annual reporting of the results of such monitoring to the Administrator." [Section 223(a)15]

JJDP ACT DEFINITIONS

The United States *Federal Register, 28 CFR Part 31 §31.304,* provides the definitions under the JJDPA.

ACCUSED JUVENILE OFFENDER: A juvenile charged with a delinquent act but adjudication has not yet been determined. (MCA 41-5-103(9) Delinquent youth)

ADJUDICATED JUVENILE OFFENDER: A juvenile determined guilty of a delinquent act and sentenced accordingly. (MCA 41-5-103(7) Criminally convicted youth)

ADULT JAIL:: A facility operated by a local unit of government for the physical detention of persons charged with, or convicted or, criminal offenses for a period of one year or less. (MCA 41-5-103(20) Jail)

ADULT LOCK-UP: A holding facility operated by a local unit of government for the physical detention of persons charged with violating the law. The facility is of a temporary nature and does not hold persons after they have been formally charged. (MCA 41-5-103(20) Jail)

COLLOCATED FACILITY: A secure juvenile detention facility located in the same building as an adult jail or lockup, or is part of a related complex of buildings located on the same grounds as an adult jail or lockup. (MCA 41-5-103(45)(a)(ii) collocated secure detention facility)

FACILITY: A place, an institution, a building or part thereof, set of buildings, or an area whether or not enclosing a building or set of buildings which is used for the lawful custody and treatment of juveniles and may be owned or operated by public and private agencies. (MCA 41-5-103(13) Detention facility)

JUVENILE: Refers to any individual under the age of 18 or is still under the jurisdiction of the juvenile court. (MCA 41-5-103(39) Youth)

JUVENILE CORRECTIONAL FACILITY: Secure placement after adjudication and disposition for juveniles. (MCA 41-5-103(36) State youth correctional facility)

JUVENILE DETENTION FACILITY: Secure facility used for the temporary placement of juvenile offenders. (MCA 41-5-103(45) Youth detention facility)

JUVENILE OFFENDER: An individual subject to the exercise of juvenile court jurisdiction for purposes of adjudication and treatment based on age and offense limitations as defined by state law, i.e., a criminal type offender or a status offender. (MCA 41-5-206(1) direct file in district court and 41-5-321 taking into custody)

NON-OFFENDER: A juvenile who is subject to the jurisdiction of the juvenile court, usually under abuse, dependency, or neglect statutes for reasons other than legally prohibited conduct of the juvenile. (MCA 41-5-103(46) Youth in need of care)

SECURE: Used to define a detention or correctional facility, this term includes residential facilities with construction features designed to physically restrict the movements and activities of persons in custody such as locked rooms and buildings, fences or other physical structures. It does not include facilities where physical restriction of movement or activities is provided solely through facility staff. (MCA 41-5-103(12) Detention (31) Secure detention facility)

STATUS OFFENDER: A juvenile who has been accused or adjudicated for an act that would not be a crime if committed by an adult. Status offenses include: truancy, runaway, minors in possession or consumption of alcohol or tobacco and curfew violations. (MCA 41-5-103(47) Youth in need of intervention. *Note: in Montana, probation violation is criminal contempt per MCA 45-7-309 therefore a youth in need of intervention who has violated parole is considered a delinquent youth. Reference MCA 41-5-1412*)

TEMPORARY HOLDING: An area used for the temporary holding of a child from the time they are taken into custody until a detention hearing is held, if it has been determined that the child requires a staff-secure or physically secure setting. The area must be separated from adults and constantly monitored. (MCA 41-5-206, 41-5-347, 41-5-348, 41-5-349, 41-5-350)

VALID COURT ORDER: Court Order given by juvenile court judge to a juvenile brought before the court and made subject to a court order. The JJDP Act permits the incarceration of juveniles for violating the court order if they have received their full due process rights as guaranteed by the Constitution. (MCA 41-5-331 rights, 41-5-332 probable cause, 41-5-1402 Petition, 41-5-1403 Summons)

WAIVED TO ADULT COURT: Formal process to transfer or direct file a juvenile case to adult court for trial. Once waived or transferred, a youth is no longer subject to the core requirements of the JJDP Act. (MCA 41-5-206 direct file into district court)

FIVE CORE REQUIREMENTS OF THE JJDPA

1 DEINSTITUTIONALIZATION OF STATUS OFFENDERS (DSO)

The Deinstitutionalization of Status Offenders (DSO) requirement of the Juvenile Justice and Delinquency Prevention Act requires juveniles that are charged with or who have committed offenses that would not be criminal if committed by an adult, or such non-offenders as dependent and neglected children, shall not be placed in secure detention facilities or secure correctional facilities.

> *Status offender:* A juvenile who has been accused or adjudicated for an act that would not be a crime if committed by an adult. Status offenses include: truancy, curfew violations, runaway, minors in possession or consumption of alcohol or tobacco.
>
> *Non-offender:* A juvenile who is not charged with an offense and/or an abused or neglected child.

THE INTENT OF DSO

The DSO requirement has been a part of the JJDPA since its inception in 1974. The DSO reflects the following principles:

- Holding status and non-offenders in secure confinement, although expedient, is an inappropriate strategy for handling juveniles who have not engaged in any criminal behavior.
- Historically, status offenders, when handled as delinquents, have been placed in environments that lead to physical and emotional harm.
- The punishment of status offender, often abused and neglected children, simply represents a continuation of the cycle of mistreatment.

The JJDPA does not ignore the problems of status and non-offenders. Instead, the JJDPA has supplied federal funds to the states, who meet the core requirements, to develop a comprehensive continuum of care. The JJDPA encourages the creation and implementation of community-based treatment, diversion and delinquency prevention programs.[2] The JJDPA emphasizes the importance of these programs as appropriate, and cost effective, alternatives to secure confinement. The maintenance of this requirement promotes just policies concerning status and non-offenders, and it upholds the necessary distinction in treatment strategies for the status and non-offenders versus the more serious juvenile offender.

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[2] For more information about available grants to develop community-based programs visit the Montana Board of Crime Control Website at http://bccdoj.doj.state.mt.us/ or call the Juvenile Justice Specialist at (406) 444-3651.

Statutory Exceptions to the DSO Requirement.

Statutory exceptions are defined in the JJDPA and established by Congress. Their interpretation is strictly defined by the statute. These exceptions allow states to remove from consideration, for compliance purposes, offenses that constitute the violation of a valid court order or violation of Section 922(X) of the Title 18 (handgun possession) or similar state law. The following describes the specifics of the Valid Court Order Exception.

OJJDP Valid Court Order Checklist

For the Purpose of determining whether a valid court order exception can be claimed, all of the following conditions must be present:

1) The juvenile was brought before a court of competent jurisdiction.
2) The court order regulated the future conduct of the juvenile.
3) The juvenile received fair and adequate warning of the consequences of the violation of the order at the time it was issued.
4) The warning was provided to the juvenile and his/her attorney and/or legal guardian in writing.
5) The warning was reflected in the court record and proceedings.
6) There was a judicial determination, based on a hearing, that there was probable cause to believe that the juvenile violated the court order.
7) The probable cause hearing was held during the 24 hour grace period following the juvenile's placement in secure detention.
8) The violation hearing was conducted within 72 hours, exclusive of non-judicial days.
9) Prior to and during the violation hearing, the following due process rights were provided:
   - The right to have charges against the juvenile in writing served upon him/her in a reasonable time before the hearing;
   - The right to a hearing before the court;
   - The right to an explanation of the nature and consequences of the proceedings;
   - The right to legal counsel, and the right to have counsel appointed by the court if indigent;
   - The right to confront witnesses;
   - The right to present witnesses;
   - The right to have a transcript of record of the proceedings; and
   - The right of appeal to an appropriate court.
10) At the violation hearing, the judge determined that there is no less restrictive alternative appropriate to the needs of the juvenile and the community. This determination, if it results in a disposition of secure confinement, must be informed by a written report to the judge that reviews the behavior of the juvenile and the circumstances under which the juvenile was brought before the court and made subject to such order, determines the reasons for the juvenile's behavior, and determines whether all dispositions other than secure confinement have been exhausted or are clearly

inappropriate. This report must be prepared and submitted by a public agency or organization other than a court or law enforcement agency.

If all of the above conditions are present, and the juvenile status offender has been found in a violation hearing to have violated a court order, the juvenile may be held in a secure juvenile detention facility.

A *non-offender* such as a dependent or neglected child, *cannot be placed in a secure juvenile detention facility for violating a valid court order.*

Reporting Exception to the DSO Requirement

If there is no alternative non-secure placement available, accused status offenders and non-offenders may be held up to 24 hours in a juvenile detention center, exclusive of weekends and holidays, prior to an initial court appearance, AND for an additional 24 hours, exclusive of weekends and holidays, immediately following an initial court appearance. *Again, this regulatory exception applies only to youth held in juvenile detention centers, not adult jails and lockups.*

2 Sight and Sound Separation from Incarcerated Adults

This requirement of the Juvenile Justice and Delinquency Prevention Act States that juveniles alleged to be or found to be delinquent and status and non-offenders shall not be detained or confined in any institution in which they could have contact with incarcerated adults. Contact includes any physical or sustained sight or sound contact between juvenile offenders in a secure custody status and incarcerated adults, including inmate trustees.

Secure custody status: When a juvenile offender is physically detained or confined in a locked room or area. Secure detention or confinement may result either from being placed in such a room or area and/or being physically secured to a cuffing rail or other stationary object. Separation must be accomplished architecturally or through policies and procedures in all secured areas.

Sight contact: When a juvenile has clear visual contact with an incarcerated adult within close proximity.

Sound contact: When a juvenile can have direct oral communication with an incarcerated adult.

The Intent of Sight and Sound Separation

The Sight and Sound Separation requirement has been part of the JJDPA since its beginning in 1974. It was passed by Congress in response to the fact, supported by research, that juveniles placed in adult facilities where they had contact with adult inmates and correctional staff were frequently the victims of physical, mental, sexual,

and emotional abuse, and the discovery that juveniles in contact with adult prisoners are exposed to the tools and training necessary to engage in criminal behavior.

In addition to protecting juveniles against abuse and corruption, sight and sound separation reinforces acceptable professional guidelines.

The American Correctional Association, the American Bar Association, and the Bureau of Indian Affairs support standards requiring separation, therefore, the sight and sound separation requirement represents the minimum standard for safe jail policy.

The separation of juveniles from adults allows for the immediate mobilization of effective, appropriate services for juveniles. The separation requirement maintains the safety of juveniles while focusing attention on their diversion to the necessary community resources.

3 Juvenile Jail Removal Initiative

This requirement of the Juvenile Justice and Delinquency Prevention Act mandates that all juveniles be removed from adult jails and lockups. A juvenile offender officially waived to adult court or direct filed into adult court falls out of the purview of the JJDPA.

The Intent of Jail Removal

The Jail Removal requirement added to the JJDPA in 1980, was in part, a method for addressing the unintended consequences of the sight and sound separation requirement.

To meet the separation requirement, juveniles were frequently held in jail environments that resembled solitary confinement. As a result of this isolation, the suicide rate of juveniles was found, according to a 1980s study by Community Research Associates, to be seven to eight times greater than that of juveniles held in juvenile detention centers.

In order to provide consistent protection of juveniles, the sight and sound separation requirement necessitated the addition of Jail Removal. The removal of juveniles from adult jails is supported by a widespread consensus on the appropriate handling of juveniles.

Juveniles held in adult jails and lockups remain at risk for physical, mental, and sexual abuse at the hands of adults. In addition, they are frequently exposed to and educated about how to become better criminals.

The National Council on Crime and Delinquency, the Coalition for Juvenile Justice, the National Sheriff's Associate, the Institute for Judicial Administration, the National Advisory Commission on Law Enforcement, and essentially every national organization

representing law enforcement and the judicial system, recommends or mandates standards that forbid the jailing of children. The intent of Jail Removal is not to release juveniles who, because of the offenses and their history, need to be securely detained, but to promote the appropriate secure confinement of these juveniles in juvenile facilities. Juvenile facilities can provide both for the public safety and the specific evaluation and treatment needs of the juvenile.

Reporting Exception to the Jail Removal Requirement

This reporting exception allows for the short term, secure holding of accused juvenile offenders for the purposes of identification, processing, and to arrange for release to parents or transfer to a juvenile facility, but in no case overnight. This exception includes a six-hour time period both immediately before and after a court appearance. Sight and sound separation must be strictly adhered to while juveniles are in a secure custody status.

Specifics of the 6-hour rule. The six-hour clock starts the moment a juvenile is placed into a locked setting. This includes any locked room, or when a juvenile is cuffed to a stationary object.

Once the clock starts, it cannot be turned off, even if the juvenile is removed briefly from the locked setting.

The six-hour rule does not apply when:

1) the juvenile is placed into a locked squad car,
2) the juvenile is handcuffed to him or herself,
3) the juvenile is in a secure booking area while being processed (*not pending processing nor after processing*) and is under continuous "in-person" supervision, or
4) the juvenile is placed into an unlocked room with freedom of movement from the facility.

4 Compliance Monitoring

This section charges all states to develop a plan and procedure to monitor jails, lockups, juvenile detention and correctional facilities, and non-secure facilities for compliance with the JJDP Act.

The Importance of Compliance Monitoring

Assessing compliance affects the state's eligibility for formula grant funding and participation in various programs offered through the Office of Juvenile Justice and Delinquency Prevention (OJJDP). Non-compliance with any of the three core requirements of the JJDP Act (De-institutionalization of Status and Non-offenders, Sight and Sound Separation, and Jail Removal) results in a 25% reduction of the funds

awarded to the state. In addition, the remaining funds must be used to achieve compliance with the violated requirement(s). An effective compliance monitoring system clarifies gaps in the continuum of care and highlights challenge areas in a state's juvenile justice system. As a result, compliance monitoring can represent a component in the process of state policy and program development.

The Delinquency Prevention Program, under Title V of the JJDP Act, requires localities to provide certification of compliance with the JJDP Act in order to be eligible for these funds.

Compliance monitoring contains four primary components:

1) ***Identification of the Monitoring Universe.*** Compiling a comprehensive list of the facilities and programs that could hold juveniles pursuant to public authority.
2) ***Classification of the Monitoring Universe.*** Determining which agencies and facilities must be monitored for compliance with the JJDP Act.
3) ***Facility Inspections.*** Secure adult jails and lockups are inspected to review the physical structure to ensure sight and sound separation of juveniles from incarcerated adults and to determine that policies and procedures remain consistent with JJDP Act guidelines. All secure juvenile facilities are inspected in order to review record keeping systems and reporting procedures. An additional sampling of non-secure facilities is required to assure consistency in classification.
4) ***Collection and Verification of Data.*** Data regarding the secure detention of juveniles shall be collected and verified for accuracy and consistency. The data collection provides the information necessary for assessing violations and determining compliance levels with the JJDP Act.

5 Disproportionate Minority Confinement (DMC)

This section requires that states make specific efforts to reduce the proportion of juveniles, who are members of minority groups, detained or confined in secure juvenile detention and correctional facilities and adult jails or lockups if such proportion exceeds the proportion in the general population.

The DMC provision of the JJDP Act consists of three steps:

1. To identify and provide documentation to indicate whether minority over-representation exists.

2. To assess at what point(s) in the system, and to what extent, that over-representation occurs.

3. To develop an action plan, included in the state's three-year juvenile justice plan, to begin to address the problem, programmatically, of minority over-representation.

The Intent of DMC

DMC was added during the 1988 reauthorization of the JJDP Act. The DMC requirement, by examining the entire system, takes a comprehensive approach to the issue of minority over-representation. The addition of DMC represents a commitment to the equitable treatment of all juveniles, regardless of race, ethnicity, and culture, and it strives to enhance the integrity of the juvenile justice system.

Data collected through the Department of Corrections and the Board of Crime Control has consistently shown that Native American youth who represent 8% of Montana's total juvenile population comprise anywhere from 25% to 32% of the youth in confinement. Data collected under the old Juvenile Probation Information System (JPIS) indicated that minority youth were equally over-represented at all decision points of the juvenile justice system, referral through disposition. Data reporting to the new CAPS/JPIS system is indicating a dramatic drop in the number of all youth referred to the juvenile justice system. At the time this manual is being written, it is unclear whether the data in CAPS/JPIS is reflective of the actual referrals of youth to the system, or reflective of problems encountered by users reporting to the system.

A component of the current 3-year plan includes funding an independent researcher to sample files of youth offenders to determine:

1) if figures reported to the CAPS/JPIS system are reflective of referrals to the system and
2) to complete the DMC matrix provided by OJJDP to analyze various points in the juvenile justice system to determine if minority youth receive progressively severe treatment as they move through each decision making point in the system.

In other states it is not uncommon to find that a minority youth who commits the same offense as a non-minority youth often receives a harsher disposition. The maintenance of a system that may practice discrimination undermines the integrity of the juvenile justice system and the principle of equal justice under the law.

The contention that minority juveniles commit more offenses and more serious offenses falters with the disparity of treatment existing between minority and non-minority juveniles sharing similar histories and committing similar offenses. The fact that virtually every state, excluding Vermont, has identified the over-representation of minorities in detention and/or correctional facilities supports the need for the maintenance of the DMC requirement. The leadership provided by the JJDP Act has initiated this widespread, essential effort to attain justice for all juveniles.

Each type of facility is subject to compliance with some or all of the core requirements. Since there are differences between the JJDP Act and the Montana Code Annotated (MCA) the following charts were developed as a reference guide to understand what a compliance monitor will look for. Note that where Montana Code is more stringent than the requirements of the JJDP Act, the monitor will look for compliance with the Code. Refer to the charts on the following pages for the definitions used for secure and non-secure detention/holds, to identify the facility types and the core requirement(s) for

which they are monitored and the strictest holding requirement (State MCA or JJDP Act) applicable to different types of offenders and non-offenders by facility type.

JUVENILE JUSTICE AND DELINQUENCY PREVENTION ACT SECURE AND NON-SECURE DETENTION	
SECURE DETENTION INCLUDES....	**NON-SECURE DETENTION INCLUDES....**
Placing a juvenile in a holding cell, *even if the door is unlocked.*	Handcuffing the juvenile to him or herself
Handcuffing the juvenile to a stationary object (cuffing ring, chair, table, cell, etc.)	Placing the juvenile in an unlocked interview room
Placing a juvenile in an interview room and locking the door.	
Note: Definitions from the JJDP Act, as amended (42 U.S.C. 5601) and JJDP Act formula Grant Consolidated Regulations (28 CFR Part 31)	

JUVENILE JUSTICE AND DELINQUENCY PREVENTION ACT FACILITIES MONITORED FOR COMPLIANCE WITH CORE REQUIREMENTS				
Each type of facility is subject to compliance with all or a portion of the core requirements. This chart shows the facilities and the core requirement for which they are monitored.				
Type of Facility	**DSO**	**S/S**	**JR**	**DMC**
Adult Jail/Lockup	Yes	Yes	Yes	Yes
Juvenile Detention/Correctional Facility	Yes	No	No	Yes
Collocated Facility	Yes	Yes	No	Yes
Non-secure Temporary Holding	No	No	No	No
Court Holding	No	Yes	No	No
KEY TO COLUMN HEADINGS DSO Deinstitutionalization of Status and Non-offenders S/S Sight Sound Separation JR Removal of Juveniles from Adult Jails & Lockups DMC Minority Detention and Confinement				

Juvenile Justice and Delinquency Prevention Act and Montana State

CUSTODY REQUIREMENTS BY MOST RESTRICTIVE REGULATION

TYPE OF JUVENILE	ADULT JAIL OR LOCKUP	JUVENILE DETENTION CENTER
Non-offender - no offense (e.g. youth in need of care, dependent/neglected)	**Per JJDP Act** can't be held securely	**MCA 41-5-344** can't be securely held
Accused Status Offender - charged with an offense that would not be a crime if committed by an adult (e.g., runaway, truant, curfew, M.I.P., etc.) youth in need of intervention	**Per JJDP Act** can't be held securely	**MCA 41-5-345(1) & (2)** can't be securely held
Adjudicated Status Offender - Court has rendered final disposition that determined youth did commit the status offense or is a youth in need of intervention.	**Per JJDP Act** can't be held securely	**Per JJDP Act**, can be held only if a Valid Court Order (VCO) violation process has been followed.
Accused Delinquent Offender - charged with an offense that would be a crime if committed by an adult, delinquent youth.	**Per MCA 41-5-349** If the youth is kept in an area that provides sight and sound separation from adults accused or convicted of criminal offenses and the court having jurisdiction is in (1) **A Metropolitan Statistical Area** (MSA), youth can be held for up to six hours, but in no case overnight, for the purpose of identification, processing or transfer of the youth to an appropriate detention facility or shelter care facility; (2) **A Non-metropolitan Statistical Area** (Non-MSA) where alternative facilities are not available or alternative facilities do not provide adequate security, youth may be held up to 24 hours, excluding weekends and legal holidays, if the youth is awaiting a probable cause hearing pursuant to 41-5-332.	**Per MCA 41-5-334** (1) If probable cause is found, at a probable cause hearing held pursuant to 41-5-332 and the court determines that continued custody of the youth is necessary and if the youth meets the criteria in 41-5-341 through 41-5-343, the youth may be placed in a detention facility. (2) If probable cause is not found or if a probable cause hearing is not held within the time specified in 41-5-332, the youth must be immediately released from custody.
Per the JJDP Act, a youth on parole who violates the terms of his parole is considered pre-adjudicated and is therefore treated as an accused delinquent offender	**Per JJDP Act** Can be held for 6 hours in a sight and sound separated area before and after court. A ***24 hour Exception available if:*** *1) the community is outside a Standard Metropolitan Statistical Area; and* *2) the community has no existing acceptable alternative placement available;*	**Per JJDP Act**, can be held for any length of time.
Adjudicated Delinquent Offender - Court rendered final disposition that determined youth committed an offense that would be considered a crime if committed by an adult.	**Per JJDP Act** Can be held for 6 hours in a sight and sound separated area before and after court. A ***24 hour Exception available if:*** *1) the community is outside a Standard Metropolitan Statistical Area; and* *2) the community has no existing acceptable alternative placement available* *;*	**Per JJDP Act** can be held for any period of time.

Juvenile Justice and Delinquency Prevention Act and Montana State

CUSTODY REQUIREMENTS BY MOST RESTRICTIVE REGULATION

TYPE OF JUVENILE	ADULT JAIL OR LOCKUP	JUVENILE DETENTION CENTER
Waived or transferred to adult court and prior to court's final disposition of youth's case	**JJDPA Does not apply. Per MCA 41-5-206 (7)** A youth whose case is filed in the district court may not be detained or otherwise placed in a jail or other adult detention facility before final disposition of the youth's case unless: (a) alternative facilities do not provide adequate security; and (b) the youth is kept in an area that provides physical separation as well as sight and sound separation from adults accused or convicted of criminal offenses.	**Per MCA 41-5-206 (7)** May be held for any length of time.
Youth adjudicated in Adult Court	JJDP Act does not apply. Per MCA 41-5-206 (6) If a youth is found guilty in district court of an offense enumerated in subsection (1), the court shall sentence the youth pursuant to 41-5-2503 and Titles 45 and 46. A youth who is sentenced to the department or a state prison must be evaluated and placed by the department in an appropriate juvenile or adult correctional facility. The department shall confine the youth in an institution that it considers proper, including a state youth correctional facility under the procedures of 52-5-111. However, a youth under 16 years of age may not be confined in a state prison facility. During the period of confinement, school-aged youth with disabilities must be provided an education consistent with the requirements of the federal Individuals With Disabilities Education Act, 20 U.S.C. 1400, et seq.	Per MCA 41-5-206 (6) If a youth is found guilty in district court of an offense enumerated in subsection (1), the court shall sentence the youth pursuant to 41-5-2503 and Titles 45 and 46. A youth who is sentenced to the department or a state prison must be evaluated and placed by the department in an appropriate juvenile or adult correctional facility. The department shall confine the youth in an institution that it considers proper, including a state youth correctional facility under the procedures of 52-5-111. However, a youth under 16 years of age may not be confined in a state prison facility. During the period of confinement, school-aged youth with disabilities must be provided an education consistent with the requirements of the federal Individuals With Disabilities Education Act, 20 U.S.C. 1400, et seq.

WAIVER & DIRECT FILE IN ADULT COURT

According to the December 10, 1996 Federal Register, 31.303(e)(2), "juveniles formally waived or transferred to criminal court and against whom a criminal charges have been filed, or juveniles over whom a criminal court has original or concurrent jurisdiction and such court's jurisdiction has been invoked through the filing of criminal felony charges" are considered adults and do not fall under the purview of the JJDP Act.

Juveniles and the Adult Court

Transferring juveniles to adult court or direct filing, although initially appearing to be an effective response to juvenile crime, does not necessarily provide the expected outcomes of greater deterrence, harsher sentences, and prevention of recidivism.

- In states that possess harsh automatic transfer laws, there has been no evidence that these punitive policies have any deterrent effect.

- Transfer to adult court may not result in harsher sentencing. The U. S. Department of Justice noted that in 1991, 44% of the cases in which a juvenile was transferred to criminal court involved property offenses, and these less serious offenses are likely to result in plea bargains in the overburdened adult criminal court system, at least do not result in incarceration.

- A study conducted in 1991 suggests recidivism rates may be lower for juveniles sanctioned in juvenile court than for juveniles sanctioned in adult court.

- Research on the transfer/waiver of juveniles to adult court documents the presence of disproportionately large numbers of minority youth being transferred in comparison to non-minority youth.

The belief that the adult system contains the resources to distribute more effective, efficient, and appropriate punishment and rehabilitation for juveniles is not widely supported in actual practice. Relying on an adult system, where effectiveness in dealing with adult criminals has been widely questioned, to deal with the problems of juveniles undermines the intention behind the creation of a juvenile justice system.

The juvenile system is an integral part of a society whose future is built upon the integrity, vision, and self-reliance of its youth. The widespread transfer of juveniles, at increasingly younger ages, to the adult system represents the relinquishment of the hope of rehabilitation and the abandonment of core juvenile justice principles.

FACILITY REGULATIONS

NEEDS ASSESSMENTS

Prior to the establishment of a holding facility within your county or municipality, it is recommended that a needs assessment be conducted. Often holding is seen as a solution to a myriad of programmatic problems within a community when in fact it is a limited and expensive option for juveniles.

Temporary holding is located on the most restrictive end of the continuum of services. The costs associated with the more restrictive programs are much higher and result in fewer resources being allocated to the less restrictive services. When resources are allocated to a limited range of programs, the options for juveniles can become program driven, rather than driven by need. The result can be the inappropriate placement of juveniles.

Therefore, some questions to ask when assessing the need for temporary holding include:

- What purpose would it serve to our juveniles and community?
- Which juveniles would we want to place in holding?
- What does the data indicate the needs are?
- What is the process for placement and referral from holding?
- Can this service be provided elsewhere?
- Does this limit the resources available for other programs?

CUSTODY REQUIREMENTS

SECURE CUSTODY

These secure custody requirements outline the JJDPA procedures for the holding of juveniles in secure facilities.

When used to define a detention or correctional facility, the term secure includes residential facilities with construction features designed to physically restrict the movements and activities of persons in custody.

1. *Deinstitutionalization of Status Offenders.* Status and non-offenders cannot be held in a secure area of a jail or lockup for any period of time. A secure area includes a locked room, cell, interview room or cuffing to a stationary object.

Accused status offenders and non-offenders may be held up to 24 hours in a juvenile detention center, exclusive of weekends and holidays, prior to an initial court appearance, AND for an additional 24 hours, exclusive of weekends and holidays, immediately following an initial court appearance.

The statutory exception to the DSO requirement addresses the secure detention of status offenders, in juvenile detention facilities, who have been accused or adjudicated, of violating a valid court order.

Note: In Montana the law is more restrictive than the JJDP Act is. MCA 41-5-344 does not allow for non-offenders to be held securely in any facility. MCA 41-5-345 (1) & (2) allows that status offenders may only be held in shelter care.

2. Separation of Juveniles from incarcerated adults. Contact includes any physical or sustained sight or sound contact between juvenile offenders in a secure custody status and incarcerated adults, including inmate trustees. A juvenile offender in a secure custody status is one who is physically detained or confined in a locked room or area. Secure detention or confinement may result either from being placed in such a room or area and/or being physically secured to a cuffing rail or other stationary object. Separation must be accomplished architecturally or through policies and procedures that clearly outline the maintenance of separation.

3. Juvenile Jail Removal. The Jail Removal provision states that juveniles may not be held securely in adult jails and lockups. The reporting exception allows for the short term, secure holding of accused juvenile offenders (six hours maximum) for the purposes of identification, processing interrogation, transfer or release and in no case overnight.

Accused or adjudicated delinquent may be placed in an adult jail or lockup for 6 hours from the time they enter a secure custody status or for 6 hours either immediately before or after a court appearance.

NON-SECURE CUSTODY

A non-secure environment, for the purposes of detention within a secured facility, is defined in terms of freedom of movement from the facility. The juvenile cannot be detained by hardware or construction fixtures designated to restrict the movement or activities of persons in custody. Non-secure custody means the juvenile is able to leave the facility at any time.

The following non-secure custody guidelines for juveniles held in law enforcement facilities were established to assist in distinguishing between secure detention and non-secure custody:

1. The area where the juvenile is placed in an unlocked, multi-purpose location, such as a lobby, office, or an interview room, which is not designated, set aside, or used as a secure area;

2. The juvenile is not physically secured to a stationary object;

3. The use of the area is limited to providing non-secure custody long enough and for the purposes of identification, processing, release, or transfer;

4. The area(s) is/are not designated or intended to be used for residential purposes, and

5. Continual, visual supervision is provided by an officer or facility staff.

CLASSIFICATION OF FACILITIES

Classification will determine what type of juvenile may be held and for what period of time. The two primary descriptors to determine facility classification are the level of security and the location of the facility.

If the facility is staff-secure or non-secure and is not located on the same grounds with an adult jail or lock-up, the non-secure holdover regulations would need to be adhered to (Reference MCA 41-5-103 (19)). A resource manual "Holdover Program Policies/Procedures" is available from the Juvenile Justice Program Specialist by request.

If the facility is secure and located on the same grounds with an adult jail or lock-up, the collocation regulations shall be followed (Reference MCA 41-5-103 (26), (31) & (45))

If the facility is secure but not located on the same grounds with an adult jail or lock-up, temporary-holding standards shall be utilized. (Reference MCA 41-5-103 (13), (26), (31), (35), & (45))

REGULATIONS FOR COLLOCATED FACILITIES

The Federal Regulations issued pursuant to the JJDP Act delineates four regulatory requirements which must be met to establish a juvenile detention facility where such a facility is located in the same complex of buildings as an adult jail or lock-up, referred to as a collocated facility.

The Intent of the Collocation Requirements

The collocation regulations reflect the commitment of OJJDP to promoting best practice principles with juveniles.

- The OJJDP maintains that state should not rely on the development of collocated facilities as the primary strategy for achieving and maintaining compliance with the Jail Removal requirement.

- The emphasis on facility, program and staff separation support the core requirements of the JJDP Act and the principles that the needs of juveniles are fundamentally different from the needs of adults.

The four criteria for a juvenile detention facility that is collocated with an adult jail or lock-up provide for:

1. Separations between juveniles and adults such that there could be no sustained sight or sound contact between juveniles and incarcerated adults. Total separation must be achieved:
   a. in residential areas, e.g. sleeping and bathroom, through architectural design such that no contact is possible;
   b. in program areas, e.g. educational, vocational, and recreational, separation must be achieved either through architectural design or through time-phased use of areas as directed by written policies and procedures.

2. Total separation in all juvenile and adult programs within the facilities, including recreation, education, counseling, healthcare, dining, sleeping and general living activities.

3. Separate juvenile and adult staff, including management, security staff and direct care staff, such as recreation, education and counseling. Specialized services staff, such as cooks, bookkeepers, and medical professionals who are not normally in contact with detainees, or whose infrequent contact occur under conditions of separation of juveniles and adults, can serve both.

4. In states that have established standards or licensing requirements for secure juvenile detention facilities, the juvenile facility must meet the standards and be licensed as appropriate. Montana Licensing Standards are available on request from:

   Skip Lopuch
   Montana Department of Corrections
   1539 11th Avenue
   Helena, MT 59620
   Phone: (406) 444-7471

TECHNICAL ASSISTANCE & TRAINING

The Montana Board of Crime Control and the Youth Justice Council recognize the challenges for reaching and maintaining compliance with the JJDPA. Technical assistance and training is available to agencies, counties and municipalities. Examples include, but are not limited to:

- New jail or lock-up blueprint review to determine whether the proposed facility and juvenile processing practices are in compliance with the core requirements of the JJDPA.
- Education and training for patrol, detention and administrative officers regarding the handling of juveniles.
- Training for juvenile justice professionals at conferences or regional meetings.
- Assistance to local communities interested in developing or reviewing detention practices and placement options.
- Problem solving to reach solutions consistent with the JJDP Act and responsive to community needs and protections.
- Assistance in reviewing liability issues related to juvenile holding.

APPENDIX 1

CORRESPONDING MONTANA CODE ANNOTATED (MCA)

Relevant definitions found in *MCA 41-5-103:*

(7) "Criminally convicted youth," means a youth who has been convicted in a district court pursuant to 41-5-206

(9) "Delinquent youth" means a youth who is adjudicated under formal proceedings under the Montana Youth Court Act as a youth:
(a) who has committed an offense that, if committed by an adult, would constitute a criminal offense; or
(b) who has been placed on probation as a delinquent youth or a youth in need of intervention and who has violated any condition of probation.

(12) "Detention" means the holding or temporary placement of a youth in the youth's home under home arrest or in a facility other than the youth's own home for:
(a) the purpose of ensuring the continued custody of the youth at any time after the youth is taken into custody and before final disposition of the youth's case;
(b) contempt of court or violation of a valid court order; or
(c) violation of a youth parole agreement.

(13) "Detention facility" means a physically restricting facility designed to prevent a youth from departing at will. The term includes a youth detention facility, short-term detention center, and regional detention facility

(19) "Holdover" means a room, office, building, or other place approved by the board of crime control for the temporary detention and supervision of youth in a physically unrestricting setting for a period not to exceed 24 hours while the youth is awaiting a probable cause hearing, release, or transfer to an appropriate detention or shelter care facility. *The term does not include a jail.*

(20) "Jail" means a facility used for the confinement of adults accused or convicted of criminal offenses. The term includes a lockup or other facility used primarily for the temporary confinement of adults after arrest but does not include a collocated juvenile detention facility that complies with 28 CFR, part 31.

(27) "Probable cause hearing" means the hearing provided for in 41-5-332.

(28) "Regional detention facility" means a youth detention facility established and maintained by two or more counties, as authorized in 41-5-1804.

(30) "Running away from home" means that a youth has been reported to have run away from home without the consent of a parent or guardian or a custodian having legal custody of the youth.

(31) "Secure detention facility" means a public or private facility that:

(a) is used for the temporary placement of youth or individuals accused or convicted of criminal offenses or as a sanction for contempt of court, violation of a parole agreement, or violation of a valid court order; and

(b) is designed to physically restrict the movements and activities of youth or other individuals held in lawful custody of the facility.

(32) "Serious juvenile offender" means a youth who has committed an offense that would be considered a felony offense if committed by an adult and that is an offense against a person, an offense against property, or an offense involving dangerous drugs.

(33) "Shelter care" means the temporary substitute care of youth in physically unrestricting facilities.

(34) "Shelter care facility" means a facility used for the shelter care of youth. The term is limited to the facilities enumerated in 41-5-344.

(35) "Short-term detention center" means a detention facility licensed by the department for the temporary placement or care of youth, for a period not to exceed 10 days excluding weekends and legal holidays, pending a probable cause hearing, release, or transfer of the youth to an appropriate detention facility, youth assessment center, or shelter care facility.

(36) "State youth correctional facility" means a residential facility used for the placement and rehabilitation of delinquent youth, such as the Pine Hills youth correctional facility in Miles City.

(39) "Youth" means an individual who is less than 18 years of age without regard to sex or emancipation.

(45) "Youth detention facility" means a secure detention facility licensed by the department for the temporary substitute care of youth that is:

(a)

(i) operated, administered, and staffed separately and independently of a jail; or

(ii) a collocated secure detention facility that complies with 28 CFR, part 31; and

(b) used exclusively for the lawful detention of alleged or adjudicated delinquent youth or as a sanction for contempt of court, violation of a parole agreement, or violation of a valid court order.

(46) "Youth in need of care" has the meaning provided for in 41-3-102. (i.e., (23) "Youth in need of care" means a youth who has been adjudicated or determined, after a hearing, to be or to have been abused or neglected.)

(47) "Youth in need of intervention" means a youth who is adjudicated as a youth and who commits an offense prohibited by law that if committed by an adult would not constitute a criminal offense, including but not limited to a youth who:

(a) violates any Montana municipal or state law regarding alcoholic beverages;

(b) continues to exhibit behavior, including running away from home or habitual truancy, beyond the control of the youth's parents, foster parents, physical custodian, or guardian despite the attempt of the youth's parents, foster parents, physical custodian, or guardian to exert all reasonable efforts to mediate, resolve, or control the youth's behavior; or

(c) has committed any of the acts of a delinquent youth but whom the youth court, in its discretion, chooses to regard as a youth in need of intervention.

MCA 41-5-206. **Filing in district court prior to formal proceedings in youth court.**

(1) The county attorney may, in the county attorney's discretion and in accordance with the procedure provided in 46-11-201, file with the district court a motion for leave to file an information in the district court if:

(a) the youth charged was 12 years of age or older at the time of the conduct alleged to be unlawful and the unlawful act would if it had been committed by an adult constitute:

(i) sexual intercourse without consent as defined in 45-5-503;

(ii) deliberate homicide as defined in 45-5-102;

(iii) mitigated deliberate homicide as defined in 45-5-103;

(iv) assault on a peace officer or judicial officer as defined in 45-5-210; or

(v) the attempt, as defined in 45-4-103, of or accountability, as provided in 45-2-301, for either deliberate or mitigated deliberate homicide; or

(b) the youth charged was 16 years of age or older at the time of the conduct alleged to be unlawful and the unlawful act is one or more of the following:

(i) negligent homicide as defined in 45-5-104;

(ii) arson as defined in 45-6-103;

(iii) aggravated assault as defined in 45-5-202;

(iv) assault with a weapon as defined in 45-5-213;

(v) robbery as defined in 45-5-401;

(vi) burglary or aggravated burglary as defined in 45-6-204;

(vii) aggravated kidnapping as defined in 45-5-303;

(viii) possession of explosives as defined in 45-8-335;

(ix) criminal distribution of dangerous drugs as defined in 45-9-101;

(x) criminal production or manufacture of dangerous drugs as defined in 45-9-110;

(xi) attempt, as defined in 45-4-103, of or accountability, as provided in 45-2-301, for any of the acts enumerated in subsections (1)(b)(i) through (1)(b)(iii) and (1)(b)(v) through (1)(b)(xii);

(xii) use of threat to coerce criminal street gang membership or use of violence to coerce criminal street gang membership, as defined in 45-8-403;

(xiii) escape as defined in 45-7-306.

(2) The county attorney shall file with the district court a petition for leave to file an information in district court if the youth was 17 years of age at the time the youth committed an offense listed under subsection (1).

(3) The district court shall grant leave to file the information if it appears from the affidavit or other evidence supplied by the county attorney that there is probable cause to believe that the youth has committed the alleged offense. Within 30 days after leave to file the information is granted, the district court shall conduct a hearing to determine whether the matter must be transferred back to the youth court, unless the hearing is waived by the youth or by the youth's counsel in writing or on the record. The hearing may be continued on request of either party for good cause. The district court may not transfer the case back to the youth court if the district court finds, by a preponderance of the evidence, that a youth court proceeding and disposition will not serve the interests of community protection and the best interests of the youth, and that, considering the seriousness of the offense, the case should remain in the district court.

(4) The filing of an information in district court terminates the jurisdiction of the youth court over the youth with respect to the acts alleged in the information. A youth may not be prosecuted in the district court for a criminal offense originally subject to the jurisdiction of the youth court unless the case has been filed in the district court as provided in this section. A case may be transferred to district court after prosecution as provided in 41-5-208 or 41-5-1605.

(5) An offense not enumerated in subsection (1) that arises during the commission of a crime enumerated in subsection (1) may be:

(a) tried in youth court;

(b) transferred to district court with an offense enumerated in subsection (1) upon motion of the county attorney and order of the district court. The district court shall hold a hearing before deciding the motion.

(6) If a youth is found guilty in district court of an offense enumerated in subsection (1), the court shall sentence the youth pursuant to 41-5-2503 and Titles 45 and 46. A youth who is sentenced to the department or a state prison must be evaluated and placed by the department in an appropriate juvenile or adult correctional facility. The department shall confine the youth in an institution that it considers proper, including a state youth correctional facility under the procedures of 52-5-111. However, a youth under 16 years of age may not be confined in a state prison facility. During the period of confinement, school-aged youth with disabilities must be provided an education consistent with the requirements of the federal Individuals With Disabilities Education Act, 20 U.S.C. 1400, et seq.

(7) A youth whose case is filed in the district court may not be detained or otherwise placed in a jail or other adult detention facility before final disposition of the youth's case unless:

(a) alternative facilities do not provide adequate security; and

(b) the youth is kept in an area that provides physical separation as well as sight and sound separation from adults accused or convicted of criminal offenses.

PART 3
Custody and Detention

41-5-301. Renumbered 41-5-1201. Sec. 47, Ch. 286, L. 1997.

41-5-302. Renumbered 41-3-1111. Sec. 31, Ch. 465, L. 1983.

41-5-303. through 41-5-307. Renumbered. Sec. 47, Ch. 286, L. 1997.

41-5-308. Repealed. Secs. 14, 16, Ch. 547, L. 1991.

History: En. Sec. 2, Ch. 475, L. 1987; amd. Sec. 6, Ch. 434, L. 1989; amd. Sec. 22, Ch. 799, L. 1991.

41-5-309. Renumbered 41-5-323. Sec. 47, Ch. 286, L. 1997.

41-5-310. Repealed. Sec. 46, Ch. 286, L. 1997; Sec. 74, Ch. 550, L. 1997.

History: En. Sec. 1, Ch. 548, L. 1991.

41-5-311. Renumbered 41-5-349. Sec. 47, Ch. 286, L. 1997.

41-5-312. Repealed. Sec. 46, Ch. 286, L. 1997.

History: En. Sec. 4, Ch. 547, L. 1991.

41-5-313. Renumbered 41-5-350. Sec. 47, Ch. 286, L. 1997.

41-5-314. Renumbered 41-5-321. Sec. 47, Ch. 286, L. 1997.

41-5-315. Repealed. Sec. 27, Ch. 799, L. 1991.

History: En. Sec. 12, Ch. 434, L. 1989.

41-5-316. Repealed. Sec. 27, Ch. 799, L. 1991.

History: En. Sec. 13, Ch. 434, L. 1989.

41-5-317 through 41-5-320 reserved.

41-5-321. Taking into custody.

(1) A youth may be taken into custody under the following circumstances:

(a) by a law enforcement officer pursuant to a lawful order or process of any court;
(b) by a law enforcement officer pursuant to a lawful arrest for violation of the law;
(c) by a law enforcement officer, agent of the department, county attorney, or a person or physician treating a youth when there is reason to believe the youth is a youth in need of care and that the residence of the youth or the custody by the person legally responsible for the youth presents an imminent danger to the life or health of the youth;
(d) by a juvenile home arrest officer or an officer listed in subsections (1)(a) through (1)(c) if a youth placed under a home arrest program has violated a condition of the placement and the home arrest officer or law enforcement officer

has direct knowledge of the violation or a juvenile probation officer has provided the juvenile home arrest officer notice of a violation.

(2) The taking of a youth into custody is not an arrest except for the purpose of determining the validity of the taking under the constitution of Montana or the United States.

History: En. 10-1211 by Sec. 11, Ch. 329, L. 1974; R.C.M. 1947, 10-1211; MCA 1981, 41-5-302; redes. 41-3-1111 by Sec. 31(4), Ch. 465, L. 1983; Sec. 41-3-1111, MCA 1989; redes. 41-5-314 by Sec. 15, Ch. 547, L. 1991; Sec. 41-5-314, MCA 1995; redes. 41-5-321 by Sec. 47, Ch. 286, L. 1997; amd. Sec. 2, Ch. 326, L. 1999. 41-5-322. Release from custody -- detention -- shelter care.

(3) Whenever a peace officer believes, on reasonable grounds, that a youth can be released to a responsible person, the peace officer may release the youth to that person upon receiving a written promise from the person to bring the youth before the probation officer at a time and place specified in the written promise, or a peace officer may release the youth under any other reasonable circumstances.

(4) Whenever the peace officer believes, on reasonable grounds, that the youth must be detained, the peace officer shall notify the probation officer immediately and shall, as soon as practicable, provide the probation officer with a written report of the peace officer's reasons for holding the youth in detention. If it is necessary to hold the youth pending appearance before the youth court, then the youth must be held in a place of detention, as provided in 41-5-348, that is approved by the youth court.

(5) If the peace officer believes that the youth must be sheltered, the peace officer shall notify the probation officer immediately and shall provide a written report of the peace officer's reasons for placing the youth in shelter care. If the youth is then held, the youth must be placed in a shelter care facility approved by the youth court.

History: En. 10-1213 by Sec. 13, Ch. 329, L. 1974; amd. Sec. 1, Ch. 348, L. 1975; amd. Sec. 5, Ch. 571, L. 1977; R.C.M. 1947, 10-1213; amd. Sec. 7, Ch. 547, L. 1991; amd. Sec. 22, Ch. 286, L. 1997; Sec. 41-5-307, MCA 1995; redes. 41-5-322 by Sec. 47, Ch. 286, L. 1997.

41-5-323. Bail.

A youth placed in detention or shelter care may be released on bail. The court shall use the provisions of Title 46, chapter 9, as guidance. In determining the amount of bail, the court shall consider the financial ability of the youth and the parents or legal custodian of the youth.

History: En. Sec. 3, Ch. 475, L. 1987; amd. Sec. 8, Ch. 547, L. 1991; Sec. 41-5-309, MCA 1995; redes. 41-5-323 by Sec. 47, Ch. 286, L. 1997.

41-5-324 through 41-5-330 reserved.

41-5-331. Rights of youth taken into custody -- questioning -- waiver of rights.

(1) When a youth is taken into custody for questioning upon a matter that could result in a petition alleging that the youth is either a delinquent youth or a youth in need of intervention, the following requirements must be met:

(a) The youth must be advised of the youth's right against self-incrimination and the youth's right to counsel.

(b) The investigating officer, probation officer, or person assigned to give notice shall immediately notify the parents, guardian, or legal custodian of the youth that the youth has been taken into custody, the reasons for taking the youth into custody, and where the youth is being held. If the parents, guardian, or legal custodian cannot be found through diligent efforts, a close relative or friend chosen by the youth must be notified.

(2) A youth may waive the rights listed in subsection (1) under the following situations:

(a) when the youth is 16 years of age or older, the youth may make an effective waiver;

(b) when the youth is under 16 years of age and the youth and the youth's parent or guardian agree, they may make an effective waiver; or

(c) when the youth is under 16 years of age and the youth and the youth's parent or guardian do not agree, the youth may make an effective waiver only with advice of counsel.

History: En. 10-1218 by Sec. 18, Ch. 329, L. 1974; amd. Sec. 6, Ch. 100, L. 1977; amd. Sec. 9, Ch. 571, L. 1977; R.C.M. 1947, 10-1218(1)(a), (1)(b); amd. Sec. 1, Ch. 385, L. 1979; amd. Sec. 7, Ch. 475, L. 1987; amd. Sec. 5, Ch. 515, L. 1987; (2) thru (6) En. Sec. 1, Ch. 475, L. 1987; amd. Sec. 2, Ch. 271, L. 1989; amd. Sec. 3, Ch. 547, L. 1991; amd. Sec. 11, Ch. 286, L. 1997; amd. Sec. 76, Ch. 550, L. 1997; Sec. 41-5-303, MCA 1995; redes. 41-5-331 by Sec. 47, Ch. 286, L. 1997.

41-5-332. Custody -- hearing for probable cause.

(1) When a youth is taken into custody for questioning, a hearing to determine whether there is probable cause to believe the youth is a delinquent youth or a youth in need of intervention must be held within 24 hours, excluding weekends and legal holidays. A hearing is not required if the youth is released prior to the time of the required hearing.

(2) When a youth is taken into custody for a violation of placement under a home arrest program, a hearing to determine whether a violation occurred must be held within 24 hours, excluding weekends and holidays.

(3) The probable cause hearing required under subsection (1) may be held by the youth court, a justice of the peace, a municipal or city judge, or a magistrate having jurisdiction in the case as provided in **41-5-203**. If the probable cause hearing is held

by a justice of the peace, a municipal or city judge, or a magistrate, a record of the hearing must be made by a court reporter or by a tape recording of the hearing.

(4) A probable cause hearing may be conducted by telephone if other means of conducting the hearing are impractical. All written orders and findings of the court in a hearing conducted by telephone must bear the name of the judge or magistrate presiding in the case and the hour and date the order or findings were issued.

(5) A hearing is not required for a youth placed in detention for an alleged parole violation.

History: En. Sec. 12, Ch. 286, L. 1997; amd. Sec. 76, Ch. 550, L. 1997; amd. Sec. 3, Ch. 326, L. 1999; amd. Sec. 4, Ch. 532, L. 1999.

41-5-333. Custody -- hearing for probable cause -- procedure.

(1) At a probable cause hearing held pursuant to 41-5-332, the youth must be informed of the youth's constitutional rights and the youth's rights under this chapter.

(2) A parent, guardian, or custodian of the youth may be held in contempt of court for failing to be present at or to participate in the probable cause hearing unless the parent, guardian, or custodian:

(a) cannot be located through diligent efforts of the investigating peace officer or peace officers; or

(b) is excused by the court for good cause.

(3) At the probable cause hearing, a guardian ad litem may be appointed as provided in 41-5-1411.

History: En. Sec. 13, Ch. 286, L. 1997.

41-5-334. Custody -- hearing for probable cause -- determinations -- detention -- release.

(1) If, at a probable cause hearing held pursuant to 41-5-332, it is determined that there is probable cause to believe that the youth is a delinquent youth or a youth in need of intervention, the court having jurisdiction in the case shall determine whether the youth should be retained in custody. If the court determines that continued custody of the youth is necessary and if the youth meets the criteria in 41-5-341 through 41-5-343, the youth may be placed in a detention facility, a youth assessment center, or a shelter care facility as provided in 41-5-345 through 41-5-348 but may not be placed in a jail or other facility used for the confinement of adults accused or convicted of criminal offenses.

(2) If probable cause is not found or if a probable cause hearing is not held within the time specified in 41-5-332, the youth must be immediately released from custody.

History: En. Secs. 14, 49(3)(f), Ch. 286, L. 1997.

41-5-335 through 41-5-340 reserved.

41-5-341. Criteria for placement of youth in secure detention facilities.

A youth may be placed in a secure detention facility only if the youth:

(1) has allegedly committed an act that if committed by an adult would constitute a criminal offense and the alleged offense is one specified in 41-5-206;
(2) is alleged to be a delinquent youth and:
(a) has escaped from a correctional facility or secure detention facility;
(b) has violated a valid court order or a parole agreement;
(c) the youth's detention is required to protect persons or property;
(d) the youth has pending court or administrative action or is awaiting a transfer to another jurisdiction and may abscond or be removed from the jurisdiction of the court;
(e) there are not adequate assurances that the youth will appear for court when required; or
(f) the youth meets additional criteria for secure detention established by the youth court in the judicial district that has current jurisdiction over the youth; or
(3) has been adjudicated delinquent and is awaiting final disposition of the youth's case.

History: En. 10-1212 by Sec. 12, Ch. 329, L. 1974; amd. Sec. 4, Ch. 571, L. 1977; R.C.M. 1947, 10-1212; amd. Sec. 1, Ch. 689, L. 1985; amd. Sec. 8, Ch. 475, L. 1987; amd. Sec. 7, Ch. 515, L. 1987; amd. Sec. 1, Ch. 610, L. 1987; amd. Sec. 3, Ch. 548, L. 1991; amd. Secs. 15, 49(3)(i), Ch. 286, L. 1997; Sec. 41-5-305, MCA 1995; redes. 41-5-341 by Sec. 47, Ch. 286, L. 1997.

41-5-342. Criteria for placement of youth in shelter care facilities.

A youth may be placed in a shelter care facility only if:

(1) the youth and the youth's family need shelter care to address their problematic situation and it is not possible for the youth to remain at home;
(2) the youth needs to be protected from physical or emotional harm;
(3) the youth needs to be deterred or prevented from immediate repetition of troubling behavior;
(4) shelter care is necessary to assess the youth and the youth's environment;
(5) shelter care is necessary to provide adequate time for case planning and disposition; or
(6) shelter care is necessary to intervene in a crisis situation and provide intensive services or attention that might alleviate the problem and reunite the family.

History: En. Sec. 16, Ch. 286, L. 1997.

41-5-343. Criteria for placement of youth in youth assessment centers. A youth may be placed in a youth assessment center only if:

(1) the youth meets the requirements for placement in shelter care;
(2) the youth has not committed an act that would be a felony offense if committed by an adult;
(3) the youth needs an alternative, staff-secured site for evaluation and assessment of the youth's need for services;
(4) the youth needs to be held accountable for the youth's actions with structured programming; and
(5) the youth meets qualifications as outlined by the placement guidelines that are determined by the department and coordinated with the guidelines used by the youth placement committees.

History: En. Sec. 49(3)(h), Ch. 286, L. 1997.

41-5-344. Limitation on placement of youth in need of care.

A youth alleged to be a youth in need of care may be placed only by the department of public health and human services as provided in Title 41, chapter 3, and may not be placed in a youth assessment center, youth detention facility, jail, or other facility intended or used for the confinement of adults accused or convicted of criminal offenses.

History: En. 10-1214 by Sec. 14, Ch. 329, L. 1974; amd. Sec. 6, Ch. 571, L. 1977; R.C.M. 1947, 10-1214; amd. Sec. 3, Ch. 465, L. 1983; amd. Sec. 2, Ch. 737, L. 1985; amd. Sec. 1, Ch. 11, Sp. L. June 1986; amd. Sec. 9, Ch. 475, L. 1987; amd. Sec. 5, Ch. 434, L. 1989; amd. Sec. 7, Ch. 105, L. 1991; amd. Sec. 5, Ch. 547, L. 1991; amd. Secs. 4, 5, Ch. 548, L. 1991; amd. Secs. 20, 21, Ch. 799, L. 1991; amd. Sec. 62, Ch. 10, L. 1993; amd. Sec. 5, Ch. 528, L. 1995; amd. Secs. 17, 49(3)(f), Ch. 286, L. 1997; Sec. 41-5-306, MCA 1995; redes. 41-5-344 by Sec. 47, Ch. 286, L. 1997.

41-5-345. Limitation on placement of youth in need of intervention.

(1) After a probable cause hearing provided for in 41-5-332, a youth alleged to be a youth in need of intervention may be placed only in shelter care, as provided in 41-5-347.

(2) A youth alleged or found to be a youth in need of intervention may not be placed in a jail, secure detention facility, or correctional facility.

History: En. Sec. 18, Ch. 286, L. 1997; amd. Sec. 76, Ch. 550, L. 1997.

41-5-346. Limitation on placement of delinquent youth.

After a probable cause hearing provided for in 41-5-332, a youth alleged to be a delinquent youth may be placed only:

(1) in shelter care, in the facilities described in 41-5-347;

(2) under home arrest as provided in 41-5-347;

(3) in detention, as provided in 41-5-348; or

(4) in a community youth court program.

History: En. Sec. 19, Ch. 286, L. 1997.

41-5-347. Place of shelter care. Placement in shelter care means placement in one of the following:

(1) in a licensed youth care facility as defined in 41-3-1102; or

(2) under home arrest, with or without a monitoring device, as provided in Title 46, chapter 18, part 10, either in the youth's own home or in a facility described in subsection (1).

History: En. Secs. 20, 49(3)(f), Ch. 286, L. 1997; amd. Sec. 76, Ch. 51, L. 1999.

41-5-348. Place of detention. Placement in detention means placement in one of the following facilities:

(1) a short-term detention center;

(2) a youth detention facility, including a regional detention facility; or

(3) a secure detention facility outside the state or operated by an Indian tribe that is under contract to the state or a subdivision of the state and that is in substantial compliance with the licensing requirements contained in rules adopted by the department.[3]

History: En. Sec. 21, Ch. 286, L. 1997; amd. Sec. 5, Ch. 532, L. 1999.

41-5-349. Youth not to be detained in jail -- exceptions -- time limitations.

(1) A youth may not be detained or otherwise placed in a jail or other adult detention facility except as provided in 41-5-206 and this section.

(2) A youth who has allegedly committed an offense that if committed by an adult would constitute a criminal offense may be temporarily detained in a jail or other adult detention facility for a period not to exceed:

(a) 6 hours, but in no case overnight, for the purpose of identification, processing, or transfer of the youth to an appropriate detention facility or shelter care facility; or

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[3] For licensing information contact:
Skip Lopuch
Montana Department of Corrections
1539 11th Avenue
Helena, MT 59620
phone: (406) 444-7174

(b) 24 hours, excluding weekends and legal holidays, if the youth is awaiting a probable cause hearing pursuant to 41-5-332.

(3) The exception provided for in subsection (2)(b) applies only if:

(a) the court having jurisdiction over the youth is outside a metropolitan statistical area;
(b) alternative facilities are not available or alternative facilities do not provide adequate security; and
(c) the youth is kept in an area that provides physical as well as sight and sound separation from adults accused or convicted of criminal offenses.

(4) Whenever, despite all good faith efforts to comply with the time limitations specified in subsection (2), the limitations are exceeded, this circumstance does not serve as grounds for dismissal of the case nor does this circumstance constitute a defense in a subsequent delinquency or criminal proceeding.

History: En. Sec. 1, Ch. 547, L. 1991; amd. Sec. 49, Ch. 18, L. 1995; amd. Sec. 23, Ch. 286, L. 1997; Sec. 41-5-311, MCA 1995; redes. 41-5-349 by Sec. 47, Ch. 286, L. 1997.

41-5-350. Permitted acts -- detention of youth in law enforcement facilities -- criteria.

(1) Nothing in this chapter precludes the detention of youth in a police station or other law enforcement facility that is attached to or part of a jail if:

(a) the area where the youth is held is an *unlocked*, multipurpose area, such as a lobby, office, interrogation room, or other area that is not designated or used as a secure detention area or that is not part of a secure detention area, or, if part of such an area, that is used only for the purpose of processing, such as a booking room;
(b) the youth is not secured to a cuffing rail or other stationary object during the period of detention;
(c) use of the area is limited to ensuring custody of the youth for the purpose of identification, processing, or transfer of the youth to an appropriate detention or shelter care facility;
(d) *the area is not designed or intended to be used for residential purposes*; and
(e) the youth is under continuous visual supervision by a law enforcement officer or by facility staff during the period of time that the youth is held in detention.

(2) For purposes of this section, "secure detention" means the detention of youth or confinement of adults accused or convicted of criminal offenses in a physically restricting setting, including but not limited to a locked room or set of rooms or a cell designed to prevent a youth or adult from departing at will.

History: En. Sec. 7, Ch. 548, L. 1991; Sec. 41-5-313, MCA 1995; redes. 41-5-350 by Sec. 47, Ch. 286, L. 1997.

41-5-351 through 41-5-354 reserved.

41-5-355. Excessive juvenile population -- confinement of juveniles in alternate placements.

(1) The department shall determine the capacity for state youth correctional facilities. The department shall notify all district courts, sheriffs, and youth courts of the capacity for each state youth correctional facility by sending a report to each annually.

(2) If the population of a state youth correctional facility exceeds the capacity established by the department, the director of the department may declare that the capacity has been exceeded and temporarily stop admissions to the facility. The director shall notify each district court, sheriff, and youth court that delinquent or criminally convicted youth will not be accepted by the department for admission into the facility until the population is reduced to less than the capacity determined by the department in subsection (1).

(3) If the director of the department declares that the capacity has been exceeded, the department shall place delinquent youth committed to a state youth correctional facility or criminally convicted youth in alternate placements based on the needs of the delinquent youth or criminally convicted youth. If a youth is denied placement in a state youth correctional facility under this section, the department shall inform and seek approval of the district court of the intended alternative placement prior to placing the youth.

(4) The department may enter into contracts with the federal government, other states, local governments, public or private corporations, and other entities that have suitable facilities for confining delinquent youth or criminally convicted youth committed to the department, either because a state youth correctional facility has exceeded its capacity or because the department has no youth correctional facility that is adequate for certain delinquent youth or criminally convicted youth.

Part 14
Formal Proceeding -- Procedure

41-5-1401. Petition -- county attorney -- procedure -- release from custody.

(1) The county attorney may apply to the youth court for permission to file a petition charging a youth to be a delinquent youth or a youth in need of intervention. The application must be supported by evidence that the youth court may require. If it appears that there is probable cause to believe that the allegations of the petition are true, the youth court shall grant leave to file the petition.

(2) A petition charging a youth who is held in detention or a youth assessment center must be filed within 7 working days from the date the youth was first taken into custody or the petition must be dismissed and the youth released unless good cause is shown to further detain the youth.

(3) If a petition is not filed under this section, the complainant and victim, if any, must be informed by the probation officer or assessment officer of the action and the reasons for not filing and must be advised of the right to submit the matter to the county attorney for review. The county attorney, upon receiving a request for review, shall consider the facts, consult with the probation officer or assessment officer, and make the final decision as to whether a petition is filed.

History: En. Secs. 10, 49(3)(f), Ch. 286, L. 1997.

41-5-1402. Petition -- form and content.

(1) A petition initiating proceedings under this chapter must be signed by the county attorney, must be entitled "In the Matter of...., a youth", and must set forth with specificity:

(a) the facts necessary to invoke the jurisdiction of the court, together with a statement alleging the youth to be a delinquent youth or a youth in need of intervention;

(b) the charge of an offense, that must:

(i) state the name of the offense;

(ii) cite in customary form the statute, rule, or other provisions of law that the youth is alleged to have violated;

(iii) state the facts constituting the offense in ordinary and concise language and in a manner that enables a person of common understanding to know what is intended; and

(iv) state the time and place of the offense as definitely as possible;

(c) the name, birth date, and residence address of the youth;

(d) the names and residence addresses of the parents, guardian, or spouse of the youth and, if the parents, guardian, or spouse do not reside or cannot be found within the state or if there is none, the adult relative residing nearest to the court;

(e) whether the youth is in detention, a youth assessment center, or shelter care and, if so, the place of detention, assessment, or shelter care and the time that the youth was detained or sheltered;

(f) if any of the matters required to be set forth by this section are not known, a statement of those matters and the fact that they are not known; and

(g) a list of witnesses to be used in proving the commission of the offense or offenses charged in the petition, together with their residence addresses. The names and addresses of any witnesses discovered after the filing of the petition must be furnished to the youth upon request.

(2) When a county attorney files a delinquency petition alleging that a youth committed an offense that would be a felony if committed by an adult and that is transferable under 41-5-206 or in which a youth 12 years of age or older allegedly used a firearm, the county attorney shall indicate in the petition whether the county attorney designates the proceeding an extended jurisdiction juvenile prosecution. When the county attorney files a delinquency petition alleging that a youth committed any other offense that would be a felony if committed by an adult, the county attorney

may request that the court designate the proceeding an extended jurisdiction juvenile prosecution.

History: En. 10-1215 by Sec. 15, Ch. 329, L. 1974; amd. Sec. 7, Ch. 571, L. 1977; R.C.M. 1947, 10-1215; amd. Sec. 5, Ch. 498, L. 1997; amd. Secs. 27, 76, Ch. 550, L. 1997; Sec. 41-5-501, MCA 1995; redes. 41-5-1402 by Sec. 47, Ch. 286, L. 1997.

41-5-1403. Summons.

(1) After a petition has been filed, summons must be served directly to:

(a) the youth;
(b) the youth's parent or parents having actual custody of the youth or the youth's guardian or custodian, as the case may be; and
(c) other persons as the court may direct.

(2) The summons must:

(a) require the parties to whom it is directed to appear personally before the court at the time fixed by the summons to answer the allegations of the petition;
(b) advise the parties of their right to counsel under the Montana Youth Court Act; and
(c) have attached to it a copy of the petition.

(3) The court may endorse upon the summons an order directing the person or persons having the physical custody or control of the youth to bring the youth to the hearing.

(4) If it appears to the court that the youth needs to be placed in detention or shelter care, the judge may endorse on the summons an order directing the officer serving the summons to at once take the youth into custody and to take the youth to the place of detention or shelter care designated by the court, subject to the rights of the youth and parent or person having legal custody of the youth as set forth in the provisions of the Montana Youth Court Act relating to detention and shelter care criteria and post-detention proceedings.

(5) If a youth is placed in detention or shelter care under any provision of this chapter pending an adjudication, the court shall, as soon as practicable, conduct a probable cause hearing as provided in 41-5-332.

(6) The youth court judge may also admit the youth to bail in accordance with Title 46, chapter 9.

History: En. 10-1216 by Sec. 16, Ch. 329, L. 1974; amd. Sec. 8, Ch. 571, L. 1977; R.C.M. 1947, 10-1216; amd. Sec. 10, Ch. 475, L. 1987; amd. Sec. 9, Ch. 515, L. 1987; amd. Sec. 9, Ch. 547, L. 1991; amd. Sec. 25, Ch. 286, L. 1997; Sec. 41-5-502, MCA 1995; redes. 41-5-1403 by Sec. 47, Ch. 286, L. 1997.

41-5-1404. Service of summons.

1) Any youth who is the subject of a proceeding under this chapter must be personally served with summons at least 5 days before the time stated for appearance.

(2) Service of summons on all other persons designated in 41-5-1403(1) shall be made in accordance with Rule 4D of the Montana Rules of Civil Procedure, except that in all cases service shall be completed at least 5 days before the time stated for appearance.

(3) If a party referred to in subsection (2) herein is not personally served before a hearing and has not secluded himself with an attempt to delay or disrupt any proceeding, such party may appear within a reasonable time subsequent to the hearing and, on motion to the court, request a rehearing. The motion may be granted at the discretion of the judge if a rehearing would be in the best interest of the youth.

(4) The court may authorize payment from county funds of costs of service and necessary travel expenses incurred by persons summoned or otherwise required to appear at the hearing.

(5) An actual abandonment of a youth by his parent or parents shall constitute a waiver of summons and notice requirements by the parent or parents. A return endorsed upon the summons showing inability to serve summons constitutes prima facie evidence of actual abandonment.
(6) The youth court may, in the interests of justice, shorten the notice requirements contained herein, and such notice of shortened time shall be endorsed on the summons.

(7) A party, other than the youth, may waive service of summons on himself by written stipulation or by voluntary appearance at the hearing. If the youth is present at the hearing, his counsel may waive service of summons in his behalf.

History: En. 10-1217 by Sec. 17, Ch. 329, L. 1974; amd. Sec. 5, Ch. 100, L. 1977; R.C.M. 1947, 10-1217; Sec. 41-5-503, MCA 1995; redes. 41-5-1404 by Sec. 47, Ch. 286, L. 1997.

41-5-1405. Disqualification of judges.

The statutes of the state of Montana relating to disqualification of judges in criminal proceedings shall apply to all proceedings under this chapter.

History: En. 10-1223 by Sec. 23, Ch. 329, L. 1974; R.C.M. 1947, 10-1223; amd. Sec. 2, Ch. 515, L. 1987; Sec. 41-5-202, MCA 1995; redes. 41-5-1405 by Sec. 47, Ch. 286, L. 1997.

41-5-1406 through 41-5-1410 reserved.

41-5-1411. Appointment of guardian ad litem.

The court at any stage of a proceeding on a petition under this chapter may appoint a guardian ad litem for a youth if the youth has no parent or guardian appearing in his behalf or if their interests conflict with those of the youth. A party to the proceeding or an employee or representative of a party may not be appointed as guardian ad litem.

History: En. 10-1218 by Sec. 18, Ch. 329, L. 1974; amd. Sec. 6, Ch. 100, L. 1977; amd. Sec. 9, Ch. 571, L. 1977; R.C.M. 1947, 10-1218(4); Sec. 41-5-512, MCA 1995; redes. 41-5-1411 by Sec. 47, Ch. 286, L. 1997.

41-5-1412. Rights and obligations -- persons to be advised -- contempt.

(1) A person afforded rights under this chapter must be advised of those rights and any other rights existing under law at the time of the person's first appearance in a proceeding on a petition under the Montana Youth Court Act and at any other time specified in that act or other law.

(2) A person must be advised of obligations, including possible assessments and related costs, that may arise under this chapter, including the possibility that the person may be required to reimburse the state or local governments for costs attributable to the adjudication, disposition, attorney fees for the costs of prosecuting or defending the youth, costs of detention, supervision, care, custody, and treatment of the youth and may be required to participate in counseling, treatment, or other support services.

(3) A youth's parents or guardians are obligated to assist and support the youth court in implementing the court's orders concerning a youth under youth court jurisdiction, and the parents or guardians are subject to the court's contempt powers if they fail to do so. The youth court personnel shall assist the parents to the extent possible in implementing and enforcing interventions and consequences designed to modify the youth's behavior.

(4) A parent has a right to review the results of a youth assessment and to place a rebuttal, statement, or additional information in the youth's file in youth court.

45-7-309. Criminal contempt. (Probation Violation)

(1) A person commits the offense of criminal contempt when he knowingly engages in any of the following conduct:

(a) disorderly, contemptuous, or insolent behavior committed during the sitting of a court in its immediate view and presence and directly tending to interrupt its proceedings or to impair the respect due to its authority;
(b) breach of the peace, noise, or other disturbance directly tending to interrupt a court's proceeding;
(c) purposely disobeying or refusing any lawful process or other mandate of a court;

(d) unlawfully refusing to be sworn as a witness in any court proceeding or, after being sworn, refusing to answer any legal and proper interrogatory;
(e) purposely publishing a false or grossly inaccurate report of a court's proceeding; or
(f) purposely failing to obey any mandate, process, or notice relative to juries issued pursuant to Title 3, chapter 15.
(2) A person convicted of the offense of criminal contempt shall be fined not to exceed $500 or be imprisoned in the county jail for a term not to exceed 6 months, or both.

History: En. 94-7-309 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-7-309.

52-5-128. Detention of youth who violates parole agreement.
A youth who violates the terms and conditions of the youth's parole agreement or who escapes from a state youth correctional facility or program operated by the department may be detained by the department or by a law officer of the state, county, or city of the state upon notice in writing to the officer by the department to the effect that the youth has violated the terms and conditions of the youth's parole agreement or has escaped from a state youth correctional facility or program operated by the department.

52-5-129. Hearing on alleged violation of parole agreement -- right to appeal outcome.

(1) When it is alleged by a juvenile parole officer that a youth has violated the terms of the youth's parole agreement, the youth must be granted a hearing at the site of the alleged violation or in the county in which the youth is residing or is found within 10 days after notice has been served on the youth or the youth is detained, whichever is earlier. At the discretion of the hearings officer, this hearing may be held by means of interactive video transmission. The purpose of the hearing is to determine whether the youth committed the violation and, if so, whether the violation is of such a nature that the youth should be returned to the youth correctional facility from which the youth was released or whether a different plan for custody and supervision of the youth should be pursued by the department of corrections.

(2) The youth, upon advice of an attorney, may waive the right to a hearing.

(3) With regard to this hearing, the youth must be given:

(a) written notice of the alleged violation of the parole agreement, including notice of the purpose of the hearing;

(b) a disclosure of the evidence against the youth and the facts constituting the alleged violation;

(c) the opportunity to be heard in person or by interactive video transmission and to present witnesses and documentary evidence to controvert the evidence

against the youth and to show that there are compelling reasons that justify or mitigate the violation;

(d) the opportunity to have the hearings officer subpoena witnesses;

(e) the right to confront and cross-examine adverse witnesses in person or by means of interactive video transmission;

(f) the right to be represented by an attorney;

(g) a record of the hearing; and

(h) notice that a written statement as to the evidence relied upon in reaching the final decision and the reasons for the final decision will be provided by the hearings officer.

(4) The department shall provide a hearings officer to conduct the hearing. The department shall adopt rules necessary to effect a prompt and full review.

(5) If the hearings officer finds, by a preponderance of the evidence, that the youth did in fact commit the violation, the hearings officer shall make a recommendation to the department for the placement of the youth. In making this recommendation, the hearings officer may consider mitigating or aggravating circumstances. The youth or the youth's attorney may appeal the hearings officer's decision to the department director. The appeal must be made in writing within 5 days of the hearing. The department director or designee shall grant or deny the appeal within 5 days of receipt of the appeal.

(6) The youth may appeal the decision of the department director to the district court of the county in which the hearing was held by serving and filing a notice of appeal with the court within 10 days of the department director's decision. The youth may obtain a written transcript of the hearing from the department by giving written notice of appeal. The district court, upon receipt of a notice of appeal, shall order the department to promptly certify to the court a record of all proceedings before the department and shall proceed to a prompt hearing on the appeal based upon the record on appeal. The decision of the department may not be altered except for abuse of discretion or manifest injustice.

(7) Pending the hearing on a violation and pending the department's decision, a youth may not be detained except when the youth's detention or care is required to protect the person or property of the youth or of others or the youth may abscond or be removed from the community. The department shall determine the place and manner of detention pursuant to 41-5-348 and is responsible for the cost of the detention. Procedures for taking into custody and detention of a youth charged with violation of the youth's parole agreement are as provided in 41-5-321.

(8) If the decision is made to return the youth to the youth correctional facility from which the youth was released and the youth appeals that decision, the youth shall await the outcome of the appeal at the facility.

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